

Docket No. 122467.1501

PATENT #8

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: :
Educational Testing Service :
Serial No. 10/080,533 : Group Art Unit:
Filed: February 22, 2002 : Examiner:
For: PORTAL ASSESSMENT DESIGN SYSTEM FOR EDUCATIONAL
TESTING

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**PETITION AND FEE TO SUSPEND RULES UNDER 37 C.F.R. § 1.183 AND TO
WITHDRAW THE REQUEST FOR A SIR PRIOR TO PUBLICATION**

Commissioner for Patents
Box DAC
Alexandria, VA 22313

Sir:

This petition is to request the suspension of rules pursuant to 37 C.F.R. §1.183.

Applicant respectfully requests a Suspension of Rules pursuant to 37 C.F.R. §1.183. Applicant hereby authorizes the required fee of \$130.00 for payment of fees under 37 CFR §1.17(h) to be withdrawn from Applicant's deposit account No. 50-0436.

Applicant filed the above reference application as a statutory invention

Registration (SIR) application with a filing date of February 22, 2002.

130.00 DA

In accordance with MPEP §1109 Applicant respectfully requests the withdrawal of the SIR application. Applicant has received a Notice of Intent to Publish dated August 15, 2003 and this Petition to Withdraw is being made timely as the SIR has not yet published, it is respectfully requested that the SIR be withdrawn.

Suspension of Rules, 37 C.F.R. §1.183 provides that "[I]n an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner. . ." Applicant maintains that in the present situation, justice requires the waiver of the rules. The Applicant maintains that no harm would result if a request for the withdrawal of the SIR application was granted. The Applicant maintain that preservation of its patent rights would result if such a request was granted.

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The Applicant maintains that there has been no detrimental reliance by third parties on the SIR application. The SIR application has not been published to date. No third party would reasonably rely on the SIR disclosure as prior art. The Applicant maintains that the request to withdraw the SIR application would not result in harm to any third party.

The Applicant maintains the right to file a continuing application claiming priority to the SIR application. See MPEP 1111. Additionally, the Applicant maintains the right to expressly abandon the SIR application in favor of the continuing application. Therefore, Applicant's patent rights to continue seeking patent protection for the above identified invention is thus preserved.

Applicant believes that the fees required are satisfied by the enclosed check in the amount of \$130.00, however if additional fees are required, the Commissioner is hereby authorized to charge the deposit account No. 50-0436 for any additional fees that may be due in connection with this petition.

Should the Examiner have any questions or comments regarding this petition or the matters discussed herein, the Examiner is invited to contact the undersigned at (412) 454-5813.

Respectfully submitted,

PEPPER HAMILTON LLP


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